In the Supreme Court of the United States.

OCTOBER TERM, 1893.

WILLIAM TALBERT, APPELLANT,
v.
THE UNITED STATES. } No. 147.

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This is an appeal from a judgment of the Court of Claims rendered in favor of the petitioner, who is appellant here, for $6,534.30. From the same judgment a cross appeal was taken by the United States.

THE CASE.

The petitioner, who is a ship carpenter by trade, and had been "employed off and on at the Washington navy-yard from 1833 up to 1882." In 1860, when he was out of the employ of the Government, he conceived the plan for an improvement upon marine railways, by which vessels of greater draft could be taken up for repairs, than by the mode then in use at the navy-yard.

In 1862 the Government officers employed one Bishop to construct upon the cradle of the railway at the navy-yard a device intended to remedy the difficulty which Talbert's invention was designed to overcome. The Bishop device failed, and in 1862–'63 Thomas' device was put upon the cradle at the navy-yard, after he had instructed an attorney to apply for a patent, but before the patent was issued. Rear-Admiral Smith, then Chief of the Bureau of Yards and Docks, had an understanding and agreement with Talbert that if the device failed Talbert was to pay for the trial, but if the invention should prove to answer the purpose for which it was intended, then Talbert should be allowed, as compensation, "outside prices" *for the work done by it.*

Talbert's device has been in use at the Washington navy-yard from the winter of 1862 to the present time. Talbert obtained a patent for his invention February 2, 1864. Talbert was in the service of the Government at the time of the use and adoption of his invention by the Government.

It was found, as a fact, by the Court of Claims, that Talbert's invention was novel and useful and was the product of original thought and inventive skill. Talbert never made, or attempted to make, any other use or profit out of his invention and it does not appear that the invention has ever been used elsewhere than at the Washington navy-yard. The expense of putting the device upon the cradle was borne by the Government.

VIII. The value to the Government of plaintiff's patented improvement for marine railways during the

existence of his patent, was $6,564.30, being 2 per cent upon the amount earned by the railway cradle as improved during said period.

In 1886, Congress passed the following act for the relief of William Talbert:

> *Be it enacted, etc.*, That the claim of William Talbert, of Montgomery County, Maryland, for the use by the Government of his patented improvements for marine railways, be, and the same is hereby, referred to the Court of Claims, with authority to take jurisdiction thereof and to award judgment thereon as the merits of the case may demand, *according to its value to the Government during the existence of such patent.*

ARGUMENT.

Under the act of Congress referring this matter to the Court of Claims the functions of that court become merely those of a master in chancery to whom a cause is referred to state an account therein. But if the scope of that court's jurisdiction as to this matter was even broader, and extended to an inquiry as to the novelty and patentability of claimant's invention, or to any other matter involving the merits of the cause, yet, inasmuch as that court has found as a fact in the case that the invention was novel and useful and was the product of original thought and inventive skill, and also that the value to the Government of plaintiff's patented improvement during the existence of his patent was $6,564.30, such findings are conclusive upon this court; and it is difficult to perceive what question is submitted for decision on this appeal, unless it be the construction which the Court of

Claims has placed upon the act of Congress. It will be seen that by that act, while the Court of Claims is authorized to take jurisdiction of the claim and to award judgment thereon "as the merits of the case may demand," yet is this subject to the further limitation, viz: "According to its value to the Government during the existence of such patent." Not the "value," be it noted, to the claimant, nor the value generally or absolutely, but only the "value to the Government."

Now the Court of Claims has found as a fact in this case what that value is. This record does not afford the evidence upon which the finding of the Court of Claims was established. It furnishes no standard whatever by which the correctness of that finding can be tested. The finding is as of a conclusion of fact. It stands as the verdict of a jury, or as the findings of a master in chancery, and must be taken as conclusive in the appellate court unless the means of its contradiction is provided by the record.

So that—with the act of Congress which defines and limits the powers of the court and with the facts found by the court, and which must be taken here as conclusive—nothing is left by which this court can in anywise change, by reducing or increasing, the amount for which judgment was given in the court below.

It is true that the United States has taken a cross appeal, and that there is certified in this record the plans and specifications of claimant's invention, and also, as the ninth section of the findings of fact, the drawings and specifications upon which letters patent for a like invention were granted in 1857 in England to Robert Turnbull (p. 16).

It is competent for this court to compare these two several plans and specifications with each other, and should it determine that claimant's invention lacked novelty and patentability, they may reverse the judgment of the Court of Claims altogether.

No brief has been filed on behalf of the appellant, and we are, consequently, not apprised of the grounds relied on to sustain this appeal.

HOLMES CONRAD,
Assistant Attorney-General.